

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0229
SALES AND USE TAX
FOR TAX PERIODS: 1994-1996

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1. Sales and Use Tax: Services

Authority: IC 6-2.5-2-1, IC 6-2.5-4-1, IC 6-8.1-5-1 (b), IC 6-2.5-4-1 (e) (2), 45 IAC 2.2-4-2 (b), Information Bulletin # 49, December, 1997, Cowden & Sons Trucking, Inc. v. Indiana Department of Revenue, 575 N.E.2d 718 (Ind. Tax Ct. 1991).

Taxpayer protests the imposition of sales tax on the value of certain services.

Statement of Facts

Taxpayer is in the business of creating and selling signs, banners, decals, vinyl letters and other miscellaneous items. After a routine audit, Taxpayer was assessed additional sales tax, interest and penalty. Taxpayer protested the assessment and a hearing was held. Further facts will be provided as necessary.

Discussion

1. Sales and Use Tax: Services

Retail transactions made in Indiana are subject to sales tax. IC 6-2.5-2-1. A retail transaction is defined generally as the acquiring and subsequent selling of tangible personal property. IC 6-2.5-4-1. Sales of services are generally not retail transactions and are not subject to sales tax. Many transactions contain both service and transfer of tangible personal property components. It is more difficult to determine whether these mixed transactions are taxable as retail transactions, exempt as the provision of services, or include taxable property and exempt services.

An Indiana Department of Revenue Notice of Proposed Assessment is presumed to be accurate and taxpayers carry the burden of proving that a proposed liability is inaccurate. IC 6-8.1-5-1(b). In this case, since a Notice of Proposed Assessment was issued subsequent to an audit and Taxpayer is contending that certain transactions qualify for the service exemption to the gross retail tax, Taxpayer has the burden of proving that its transactions qualify for the exemption.

Taxpayer's business of artistic sign making includes both the creation and painting of signage and artwork on property belonging to his customer such as paint detailing work on automobiles. The auditor did not assess additional tax on these sorts of transactions. Most of Taxpayer's business consists of creating and preparing a sign with tangible personal property that is used as the raw materials in the creation of his work. Examples of the property used in Taxpayer's business are wood and paint. After Taxpayer provides the service of transforming the personal property into an artistic sign, Taxpayer transfers the completed product to his customer. When Taxpayer bills its customers, Taxpayer states the cost of the tangible personal property separately and charges and collects sales tax on the value of the tangible personal property. Taxpayer does not charge sales tax on the service of designing, creating and preparing the signage. The issue to determine is whether this separation of the service charges from the tangible personal property charges on the bill exempts the service charges from the gross retail tax.

Taxpayer contends sales tax should not be collected on the service portion of the transaction pursuant to the holding in Cowden & Sons Trucking, Inc. v. Indiana Department of Revenue, 575 N.E.2d 718 (Ind. Tax Ct. 1991). That case stands for the proposition that services are subject to sales tax only if the transfer of the property and the rendition of the services are inextricable and indivisible. In the Cowden case, the Court held that the trucking company did not have to collect and remit sales tax on the service of delivering gravel when the customers bargained for the sale of the gravel from a gravel provider and separately bargained for the delivery service.

Taxpayer also cites Information Bulletin #49, December, 1997, as evidence that Taxpayer should not collect and remit sales tax on the services provided in the sale of artistic signs. This Information Bulletin deals with sales tax applications to morticians. When funeral services are billed separately from property used in the services such as caskets and urns, funeral directors only collect and remit sales tax on the transfer of the tangible personal property. Once again, customers bargain separately for the caskets, urns, flowers, vaults and other personal property. The separate bargaining for the tangible personal property and the services distinguishes the provisions of Information Bulletin #49, dated December, 1997, from Taxpayer's provision of artistic signs.

The law governing Taxpayer's fact situation is very specific. To the extent service income represents "any bona fide charges which are made for the preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records," the income becomes part of the retail merchant's gross retail receipts. IC 6-2.5-4-1 (e)(2).

The Regulations provide guidance on how to determine the taxability of a transaction at 45 IAC 2.2-4-2 (b) as follows:

(b) Services performed or work done in respect to property and performed prior to delivery to be sold by a retail merchant must however, be included in taxable gross receipts of the retail merchant.

In Taxpayer's situation, the services are performed prior to the delivery of the finished product to the customer. There is no bargaining for the tangible personal property separate from the bargaining for the service. Sales tax must be collected on the total price of the finished product.

Finding

Taxpayer's protest is denied.

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